

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2008-196-E - ORDER NO. 2008-696
OCTOBER 9, 2008

IN RE: Combined Application of South Carolina)	ORDER GRANTING
Electric & Gas Company for a Certificate of)	REQUEST FOR
Environmental Compatibility and Public)	CONFIDENTIAL
Convenience and Necessity and for a Base)	TREATMENT
Load Review Order for the Construction and)	
Operation of a Nuclear Facility in)	
Jenkinsville, South Carolina)	

This matter comes before the Public Service Commission of South Carolina (the “Commission”) on the request of South Carolina Electric & Gas Company (“SCE&G” or “the Company”) for confidential treatment of certain material in this docket.

As set forth by Hearing Officer Directive of September 2, 2008, and pursuant to 26 S. C. Code Ann. Regs. 103-845(Supp. 2007), SCE&G on September 16, 2008 filed the direct testimonies and exhibits of eleven witnesses on behalf of the Company. Concurrent with the filing of the testimonies, SCE&G moved for this Commission to hold that one exhibit to Company witness Stephen E. Byrne’s testimony and two exhibits to Company witness E. Elizabeth Best’s testimony be held as proprietary information and be protected from public disclosure.

As part of his direct testimony, Company witness Byrne files as an exhibit a redacted and unredacted copy of the Engineering, Procurement and Construction Agreement (“EPC Contract”) between SCE&G and a consortium consisting of Westinghouse Electric Company, LLC and Stone & Webster, Inc. (collectively,

“Contractor”). According to SCE&G, the EPC Contract contains confidentiality provisions that require SCE&G to protect proprietary information that the Contractor believes to constitute trade secrets and to be commercially sensitive. The Contractor has requested that SCE&G maintain the confidentiality of certain information contained in the EPC Contract.

In keeping with the Contractor’s request and the terms of the EPC Contract, SCE&G requests that this Commission find that the confidential version, Exhibit SAB-3-C, contains protected information and issue a protective order barring the disclosure of the EPC Contract (Exhibit SAB-3-C) under the Freedom of Information Act, S.C. Code Ann. Sections 30-4-10, et seq, S.C. Code Ann. Regs. 103-804(S)(1), or any other provision of law, except in its public form. SCE&G also notes that, pursuant to 26 S.C. Code Ann Regs. 103-804(S)(2), the determination of whether a document may be exempt from disclosure is within the Commission’s discretion. Further, SCE&G states that such a ruling would be consistent with the Commission’s prior ruling in this docket finding, among other things, that the pricing and pricing terms of the EPC Contract to be confidential and barring disclosure of this information. *See* Commission Order No. 2008-467 issued July 8, 2008.

As part of her testimony, Company witness Best files two exhibits for which SCE&G seeks confidential treatment, Exhibit EEB-1-C and Exhibit EEB-2-C. The Contractor has requested that SCE&G maintain the confidentiality of the information contained within these two exhibits. These exhibits are filed in both redacted and unredacted versions. According to SCE&G, the information contained in the confidential

versions of these exhibits is identical to the information contained in the Combined Application in Exhibit F, Chart A, in the introduction to Exhibit I, and in Exhibit I, Chart A that the Company filed under seal with the Commission on May 30, 2008, and thereafter received a protective order barring disclosure of this information. *See* Commission Order No. 2008-467 issued July 8, 2008. Accordingly, the Company seeks a Protective Order from this Commission maintaining the confidentiality of these two exhibits.

We have examined this matter, and grant the request for confidential treatment of the stated exhibits to the testimony of witnesses Byrne and Best. Declaring the confidentiality of these exhibits is consistent with the terms of Order No. 2008-467, in which we found pricing and pricing terms of the EPC to be confidential. Exhibits EEB-1-C and EEB-2-C are identical to material already declared to be protected and confidential by this Commission. We therefore find that all three of the stated exhibits, i.e. SAB-3-C, EEB-1-C and EEB-2-C must be declared to be confidential and protected from disclosure.

The Freedom of Information Act (FOIA) grants a public body like this Commission the discretion to withhold exempted materials from public disclosure. Campbell v. Marion County Hospital, 354 S.C. 274, 580 S.E. 2d 163, 166 (Ct. App. 2003). “Trade secrets” are one of the materials exempt from public disclosure under FOIA. See S.C. Code Ann. § 30-4-40 (a) (1). When the entire “trade secret” definition is read, it is evident “that the legislature intended the ‘trade secret’ exemption to protect an organization’s studies or preparations in its quest to produce or sell its product or

service...” Campbell v. Marion County Hospital, 580 S.E. 2d at 169. The information under consideration also falls within the definition of a “trade secret” pursuant to the South Carolina Trade Secrets Act. See S.C. Code Ann. § 39-8-20 (5). The data referenced herein is clearly a compilation of information that has actual or potential commercial value.

FOIA also allows the Commission to exempt documents related to proposed contractual arrangements. “[C]onfidential proprietary information provided to a public body for economic development or contract negotiations purposes is not required to be disclosed.” S.C. Code Ann. § 30-4-40 (a) (5) (c). The Company is currently engaged in contract negotiations with vendors. We hold that to publicly reveal such information at this stage would harm the Company’s ability to get the lowest price.

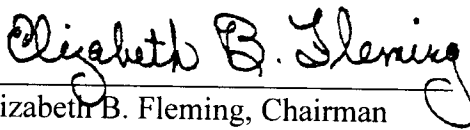
This Commission believes that a public viewing of the information at this time would impair negotiations with vendors. Under the present scenario, we hold that an impairment of the ability to negotiate with vendors by public release of the information on the Jenkinsville facility would unduly infringe upon the Company’s rights and its customers’ interests in limiting SCE&G’s costs. Accordingly, our holdings on confidentiality in this matter are in concert with case and statutory law.

The requests for a declaration of confidentiality and the issuance of a protective order are granted. The specified exhibits to testimony shall be deemed confidential, and the disclosure of the stated information shall be barred, subject to South Carolina statutory, regulatory, and case law. In the event disclosure of the information is sought,

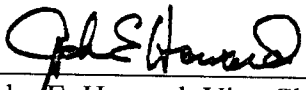
this Commission shall provide notice, and the requestor, SCE&G and the Contractor will be provided with an opportunity for hearing on the matter before this Commission.

This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:


Elizabeth B. Fleming, Chairman

ATTEST:


John E. Howard, Vice Chairman
(SEAL)